

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

MAR 29 2012

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY KAV DEPUTY CLERK

STEVEN SLADCIK,

Plaintiff,

VS.

MK MARLOW COMPANY, LLC, MARK
MARLOW, and MIKE ISBELL,

Defendants.

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CIVIL ACTION NO. SA-11-CA-529-FB

ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Court has considered the Memorandum and Recommendation of the United States Magistrate Judge filed in the above-captioned cause on March 7, 2012 (docket #27). On March 9, 2012, the certified mail addressed to Steven Sladcik containing the Court's Memorandum and Recommendation was returned by the post office with the notation "not deliverable as addressed, unable to forward." No objections have been filed to date.¹ The Court also checked the electronic docket sheet to see if plaintiff filed a change of address notice. The docket sheet reflects the same address for the plaintiff as was used to forward the Order Granting Motion to Withdraw as Counsel, Order Abating Motions and Order Requiring Advisory from Plaintiff filed December 1, 2011, and received by the plaintiff on December 5, 2011 (docket # 22).

As set forth in the Memorandum and Recommendation, plaintiff instituted this case alleging wrongful discharge from employment under 31 U.S.C. § 3730(h), the anti-retaliation provision of the Federal False Claims Act. Plaintiff claims he worked for defendant MK Marlow Company but was discharged for allegedly making, in good faith, internal complaints to defendants Mark Marlow and Mike Isbell that they had engaged in illegal activities and committed fraud against the

¹ Any party who desires to object to a Magistrate's findings and recommendations must serve and file his written objections within 14 days after being served with a copy of the findings and recommendation as provided by rules of court. 28 U.S.C. § 636(b)(1). Service upon a party must be made by mailing a copy to the party's last known address. FED. R. CIV. P. 5(b). "Service by mail is complete upon mailing." *Id.*

Government by knowingly and intentionally submitted false certified payroll reports required by the Davis Bacon Act. After a Scheduling Order was entered and an initial pretrial status conference held before the Court, plaintiff decided to dismiss his lawsuit. Defendants filed a motion and amended motion for sanctions claiming the lawsuit is frivolous. United States Magistrate Judge John W. Primomo recommends the plaintiff's motion to dismiss should be granted but the dismissal should be with prejudice, and defendants' motions for sanctions should also be granted. Magistrate Judge Primomo also required the defendants to file an Advisory establishing by affidavit and other proof the amount of attorneys' fees to which they are entitled, as sanctions. The defendants filed their Advisory on March 31, 2012 (docket #30).

Because no party has objected to the Magistrate Judge's Memorandum and Recommendation, the Court need not conduct a de novo review. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). The Court has reviewed the Memorandum and finds its reasoning to be neither clearly erroneous nor contrary to law. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 492 U.S. 918 (1989). The Recommendation shall therefore be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff's Contested Motion to Dismiss His Lawsuit (docket #16) shall be granted EXCEPT the dismissal shall be GRANTED WITH PREJUDICE, and Defendants MK Marlow Company, LLC, Mark Marlow, and Mike Isbell's Motion for Sanctions Against Plaintiff Steven Sladcik and Defendants MK Marlow Company, LLC, Mark Marlow (docket #18), and Mike Isbell's Amended Motion for Sanctions Against Plaintiff Steven Sladcik (docket #19) shall be GRANTED and defendants awarded attorneys' fees as sanctions.

Accordingly, it is hereby ORDERED that the Memorandum and Recommendation of the United States Magistrate Judge filed in this cause March 7, 2012 (docket #26), is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff's Contested Motion to Dismiss His Lawsuit

(docket #16) is GRANTED in all respects EXCEPT the dismissal is GRANTED WITH PREJUDICE, and Defendants MK Marlow Company, LLC, Mark Marlow, and Mike Isbell's Motion for Sanctions Against Plaintiff Steven Sladcik and Defendants MK Marlow Company, LLC, Mark Marlow (docket #18), and Mike Isbell's Amended Motion for Sanctions Against Plaintiff Steven Sladcik (docket #19) are GRANTED, and defendants are AWARDED the sum of \$119,653.93 in attorneys' fees and expenses as sanctions in this case. IT IS FURTHER ORDERED that this case is CLOSED, and motions pending, if any, are also DISMISSED.

It is so ORDERED.

SIGNED this 29th day of March, 2012.



FRED BIERY
CHIEF UNITED STATES DISTRICT JUDGE